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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re WILLIAM S., et al., Persons Coming Under  
the Juvenile Court Law.

TULARE COUNTY HEALTH AND HUMAN  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

WILLIAM S.,

Defendant and Appellant.

F069738

(Super. Ct. Nos. JJV065961A,  
JJV065961B)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Tulare County. Juliet L.  
Boccone, Judge.

Jesse F. Rodriguez, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kathleen Bales-Lange, County Counsel, John A. Rozum and Jason G. Chu,  
Deputy County Counsel, for Plaintiff and Respondent.

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\* Before Hill, P.J., Gomes, J. and Franson, J.

Father, William S., appeals from the juvenile court's order terminating his parental rights to the children, William (Zachary) S. and Seth S. (Welf. and Inst. Code,<sup>1</sup> § 366.26.) Father claims insufficient evidence supports the juvenile court's finding at the 18-month review hearing that returning the children to his custody would be detrimental to them. (§ 366.22, subd. (a).) Assuming, without deciding, father did not forfeit his claim by failing to seek extraordinary writ review of the juvenile court's orders following the 18-month review hearing, we conclude substantial evidence supports the court's finding of detriment and affirm the court's subsequent order terminating father's parental rights.<sup>2</sup>

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### ***A. Circumstances Leading to the Children's Removal and Dependency***

On January 17, 2012, the children were taken to the police department by their paternal aunt, Jessica S., who reported physical abuse of the children by father. Officer Wiggins, the investigating police officer, observed the children had numerous marks and bruises on their bodies. Two-year-old Seth had bruising to his left eye socket and temple, scratches and bruising to his left cheek, bruising to his hip bone, a red rash on his inner thighs, and bruising with scabbed marks on his right buttocks. Three-year-old Zachary had bruises to his forehead and scratches to his face.

Officer Wiggins asked Jessica how the children had come to be in her care. She said father dropped the children off around 7:00 p.m. to stay and play with her children. Father stayed and visited for about 20 minutes. During that time, Jessica noticed the children's injuries and asked father what had happened. Father replied the children had

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<sup>1</sup> Further statutory references are to the Welfare and Institutions Code unless otherwise specified.

<sup>2</sup> In light of our conclusion that substantial evidence supports the juvenile court's detriment finding, it is unnecessary for us to resolve the parties' disagreement over whether the court's failure to advise father orally of his writ petition rights was "cured" by the court's provision of written advisements at the 18-month review hearing.

been “beat up” by a six-year-old boy who lived in their apartment complex. When Jessica told father she did not believe him, father said a police report had been made and “CPS” had come and taken the six-year-old child away. At this point, Jessica felt it best to drop the subject before father became angry.

After father left her apartment, Jessica checked the children and saw they had additional injuries underneath their clothing. Jessica went downstairs to get her friend and neighbor, Brittney C., to witness the children’s injuries and use her camera to take pictures. After Jessica spoke with Brittney, they decided to bring the children to the police department to file a report.

Officer Wiggins asked Jessica whether she had observed any other type of abuse towards the children. Jessica responded that in mid-December 2011, she saw father “without being provoked” kick Zachary in the ribs. Jessica attributed father’s actions to his lack of stability and “anger issues.” Jessica told Officer Wiggins she got into a verbal altercation with father over the incident because she was protective of Zachary. When asked why she failed to report the incident, Jessica said father had threatened her in the past to “kill her” or “make her life a living hell.” Because of her fear of father, Jessica also failed to report an earlier incident where father took Seth, who was crying, into his bedroom. When they returned a couple minutes later, Seth had a bloody nose.

Officer Wiggins next spoke with Brittney. Brittney told him that father used to be her roommate and, when he lived with her, he was “constantly being abusive to the children.” On several occasions, she saw father pick up the children “by their heads and lift them off the ground, so he could be face to face and scream at [them].” She also saw father kick the children, knocking them to the ground.

On two separate occasions in late December 2011, Brittney saw father put on boxing gloves and start to “play fight” with the children. Father refused to stop when she asked him to, telling him he was being too aggressive with the children. Both “play fights” ended with the children suffering bloody noses. When asked why she never

reported any of these incidents, Brittney said she was afraid of father and that “he controls you by fear.”

Officer Wiggins, accompanied by a social worker and another police officer, then went to father’s apartment. They first questioned father about Seth’s head injuries. In response, father said Seth occasionally played outside and he believed the child received his injuries by falling on the wooden porch in front of their apartment. When asked about the bruising on Seth’s hip, father indicated he was unsure how the injury occurred and again mentioned that Seth played outside and said he played with other children and neighbors’ pets.

When Officer Wiggins asked father about the injuries on Seth’s buttocks, father replied he had no idea what the officer was talking about, even though father claimed to have changed Seth’s diapers a few minutes before he dropped the children off at Jessica’s apartment that evening. Officer Wiggins explained the scabbing and bruising on Seth’s buttocks were not fresh injuries. Father again denied any knowledge of the injuries and said “my sister Jessica must have done it.”

Father similarly made statements indicating he was unsure how Zachary’s injuries occurred and suggested the child might have sustained them by playing with other children. Father also told Officer Wiggins that Zachary “plays with cats” and “cats could have scratched him.”

When asked how he disciplined the children, father replied he used the “time out” method and occasionally slapped the children’s hands. Father explained that, if the children misbehaved, he would place them in time out and they would not be allowed to go outside, and, sometimes, he would have the children stand in a corner. Officer Wiggins then asked father if he ever spanked his children, to which father replied he had “never” spanked his children.

Father reported that his girlfriend and her brother also lived in the apartment with him. When Officer Wiggins and the social worker attempted to enter the apartment to

check the living conditions, their access was blocked by a mattress lying on the living room floor. Father told them this was where he and the children had been sleeping.

Officer Wiggins next spoke with father's girlfriend, Stephanie G., who reported she and father had been living together in the apartment for approximately two months. Stephanie confirmed she sometimes cared for the children and was aware of their injuries. She claimed she did not know how the injuries occurred and denied ever witnessing any type of physical abuse of the children.

When Officer Wiggins asked Stephanie how father disciplined the children, Stephanie replied that father would primarily spank the children. When asked to estimate how many times she had seen father spank the children, Stephanie replied, "about three or four times a day." When asked what other types of punishment father used with the children, Stephanie said father would also put the children in time out.

Officer Wiggins next spoke with Stephanie's brother, Jeffrey B., who confirmed he lived in the apartment with his sister and with father. Jeffrey claimed he had "very rarely" seen father discipline the children and had only ever seen father put the children in time out by placing them in a corner.

Finally, Officer Wiggins contacted father's neighbor and asked her if she had observed any type of physical abuse of the children by father. The neighbor responded that she had not seen anything of that nature but had only observed father to be a "good father" who took care of his children.

After Officer Wiggins completed his questioning, the social worker explained to father he would be placing the children in protective custody and provided father with all the necessary paperwork.

When interviewed again the next day, on January 18, 2012, father continued to deny that he physically abused the children and again suggested his sister Jessica was the source of the children's injuries. Father also claimed that Seth sustained the marks on his face from falling down the steps in front of their apartment.

On January 19, 2012, the Tulare County Health and Human Services Agency (agency) filed a dependency petition on behalf of the children, alleging that due to his physical abuse, father had placed the children at substantial risk of suffering serious physical harm. (§ 300, subd. (a).) The agency further alleged that father had failed to protect the children by not seeking appropriate medical treatment for their injuries and by exposing them to domestic violence between father and the children's mother.<sup>3</sup> (§ 300, subd. (b).)

On January 19, 2012, the children were examined by a doctor at an urgent care clinic. The doctor found the children both had lice and ear infections. The doctor also expressed concern about the marks on the children's bodies and told the social worker it appeared Seth had gotten "the shit beat out of him." The doctor recommended that a skeletal survey be conducted on Seth. The agency made an appointment for both children to be assessed at the Children's Advocacy Clinic at Children's Hospital of Central California.

On January 20, 2012, the juvenile court ordered that the children be detained. The same day, the children were assessed by a doctor at the Children's Advocacy Clinic. Skeletal examinations found no abnormalities in Zachary but found a healing buckle fracture in Seth's wrist. None of Seth's medical records, however, indicated he had ever been treated for a wrist fracture. During his assessment, Seth indicated father inflicted his current injuries. The doctor thus reported:

"Seth is a 2 year 4 month old male who sustained multiple bruises and abrasions, some of them patterned lesions which resemble pinch marks. When the child was asked about the etiology of these lesions, he responded that his 'Daddy did it.' The lesions appear to be inflicted, and the child's history is consistent with this concern."

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<sup>3</sup> The children's mother, who reportedly went to Utah in January 2013, and whose reunification services were terminated at the 12-month review hearing, is not a subject of this appeal.

On May 25, 2012, the juvenile court sustained the allegations of the dependency petition as amended, found removal of the children from father's custody was appropriate, and granted him reunification services. The court also allowed father to have one-hour supervised visits with the children twice a week.

The reunification services case plan required father to participate in individual counseling and complete a parenting class, among other things. The case plan also originally called for father to complete a domestic violence batterer's treatment program, but, at disposition, the juvenile court ordered that the treatment provider evaluate father to determine whether father should be referred to a child abuse intervention program instead.

***B. The Reunification Period***

***1. The Six-month Review Hearing***

On October 23, 2012, the agency filed a status review report for the six-month review hearing. The agency report that father had been "semi-compliant" with his individual counseling and parenting classes but had not been compliant with supervised visitation and had cancelled or failed to show to a number of scheduled visits in October 2012.

Regarding visitation, the agency reported "father has shown that he is able to be appropriate during some of the visits," observing that during a supervised visit on September 17, 2012, father appropriately corrected the children when they used foul language and again when Zachary began to fight with Seth while the children were playing together on the floor. Father also provided food and juice for the children, including a cake for Seth's birthday.

The agency further reported that father completed his domestic violence assessment on August 16, 2012. The assessor concluded father lacked "an understanding of ... the harmful effects that ... domestic violence can have on children" and was not "appropriate for the Child Abuse Intervention Program at this time due to his denial of

abuse towards his children.” The assessor recommended father continue to receive individual therapy and that the therapy include “education on how ... domestic violence can affect his children” and “his role and responsibility in protecting his children.”

Since their detention, the children had reportedly displayed sexualized and aggressive behaviors towards one another. For example, their previous foster parents reported finding Seth on top of Zachary in the middle of the night, hitting Zachary for no apparent reason. The agency further reported that father had admitted teaching the children mixed martial arts (MMA) style of fighting.<sup>4</sup> However, it did not appear father was teaching the children “any discipline, just fighting.” On September 13, 2012, father said he had been teaching the children to defend themselves and did not know what he was doing was wrong.

The agency reported that, due to the children’s behavioral problems, the children had been moved to five different placements but were learning and doing well in their current placement, where they were moved on September 27, 2012. The agency concluded it would be detrimental to return the children to father and recommended continuing his reunification services.

On November 1, 2012, the agency filed an addendum report, reporting that father had re-enrolled in parenting classes and met with his therapist, who was in the process of addressing the concerns raised by father’s August 2012 domestic violence assessment.

The agency further reported it sought discretion from the juvenile court to liberalize father’s visits with the children. The agency explained that, although father failed to visit the children regularly in October 2012, the agency anticipated father would soon begin to participate in his case plan services. Accordingly, the agency wished to

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<sup>4</sup> Father later reported that MMA fighting was his “career” and primary source of income, and claimed he could bring home up to \$3,000 for winning a fight.



“be prepared” to increase father’s visits with the children, lift supervision, and allow overnight visits, “if and when it is appropriate.”

At the uncontested six-month review hearing on November 2, 2012, the juvenile court adopted the agency’s recommendation to continue father’s reunification services but denied the agency’s request to allow father to have unsupervised visits with the children or otherwise grant the agency broader discretion concerning visitation.

## ***2. The 12-month Review Hearing***

On March 29, 2013, the agency filed a status review report for the 12-month review hearing, reporting the children had “adjusted well” to their current foster home where they were placed on September 27, 2012. Although the foster parents reported the children were challenging and continued to have behavioral issues, the foster parents had “worked hard” with the children and the children had not displayed any of the sexualized or inappropriate behavior they had displayed in previous placements since coming to live with their current foster parents. While fighting between the children temporarily increased after their mother stopped visiting them, that behavior had since subsided.

The foster parents further reported that Seth would only sleep for a few hours and would wander around the house at night, and this had been reported to his primary care physician. The physician referred both children to a doctor specializing in behavioral and developmental pediatrics to assess whether the children might qualify for Central Valley Regional Center services. In addition, the children recently started attending therapy.

As the children were adjusting well to their foster home, father was also making improvements. Thus, the agency reported that father had become compliant with his case plan and shown “significant growth since the last court hearing.”

Father was meeting with his counselor on a weekly basis, and the counselor reported father “displayed progress in reducing some of the initial risk factors of abuse or neglect toward his children” and “motivation to reunify with his children.” The counselor noted that during his assessment in August 2012, father had “displayed a great

deal of anxiety and agitation toward the system, his ex-wife, and her family.” Since then, father had “experienced a significant reduction in anxiety” and could now “sit calmly during his sessions, express himself with less pressured speech, and express less paranoia regarding potentially catastrophic events (i.e., the world coming to an end).”

The case worker aide who supervised visits between father and the children also reported father had “made a vast improvement compared to the way he was in October 2012” when she first started supervising the visits. At that time, father would “nit-pick[] at every little thing having to do with his children such as a small scratch or bruise on them” and “appear[] nervous and would begin panicking if he heard an unfamiliar sound in the ... office.” Father was now attentive to the children and no longer appeared as angry or anxious as he had in the past. The case aide added that, during his visits with the children, father demonstrated the parenting skills and coping skills he had learned.

During the supervised visits, father brought snacks and interacted with the children, who would greet and hug father upon seeing him. When the children occasionally misbehaved or cursed during visits, father would “immediately correct the child by standing him in the corner for a time-out.” Afterwards, father would “talk to the child to let him know why he was placed in time-out and if needed, have the child apologize.”

Although the agency believed father did not currently pose a risk to the children because he had apparently “learned the skills and tools to manage his anger and appropriately discipline his children,” the agency recommended the children be transitioned “slowly” back to father’s care by giving him several unsupervised visits, followed by overnight visits, before returning the children to his home. Because the children were “stable and thriving” in their current foster home, where they had been living since September 2012, and father had not yet had any unsupervised or overnight visits with them, the agency indicated a gradual transition back to father’s care was preferable to immediate placement to allow the agency to monitor the family to

determine father was able meet the children's needs and to ensure the children did not "take a step back in their progress."

At the uncontested 12-month review hearing on April 8, 2013, the juvenile court granted the agency's request to continue father's reunification services and amended his case plan to include a child abuse component. The court also granted father unsupervised visits with the children and gave the agency discretion to increase the length and frequency of the visits and to allow overnight visits, prior to returning the children to father's care. At the request of counsel for the children, the court ordered the agency to consult with counsel prior to exercising its discretion to return the children to father.

### ***3. The 18-month Review Hearing***

The agency's status review report for the 18-month review hearing, filed on June 28, 2013, recommended that the juvenile court terminate father's reunification services and set a section 366.26 hearing. The agency explained that, despite father's continuing compliance with his case plan, the children's negative behaviors had escalated since they had started having unsupervised visits with him. In addition, father's therapist reported that he "continues to deny physically abusing the children and domestic violence." After noting father's physical abuse and domestic violence were what caused the children to be removed from him in the first place, the agency concluded: "Due to the children's behaviors [as well as the father's continued denial of the physical abuse of the children], it would be detrimental to return them to the father's care and custody at this time."

The agency reported that, since the 12-month review hearing on April 8, 2013, father had been having unsupervised visits with the children twice a week for five to seven hours. According to father, the visits had been going well and the children behaved like "regular, active children." The agency acknowledged the children seemed to be very comfortable around father and displayed affection towards him. However, the children's foster parents reported the children had shown an increase in negative behaviors since beginning unsupervised visits:

“According to the care providers, the child, Zac[hary], has become increasingly clingy, has had night terrors, nail-biting, insomnia, crying fits, and destructive behavior. The child, Seth, has had an increase in insomnia, roaming the house at night, self-harming behavior such as throwing himself on the floor, hitting himself and pulling his hair out. Seth is aggressive with other children, stealing, hiding things, dissociative behaviors, talking to himself, hyperactivity, and uses profanity. The children also have past sexualized behavior which includes orally copulating each other. The substitute care providers also stated that the children are difficult to redirect following their visits.”

Due to these behaviors, the agency reported it had not allowed father to have overnight visits with the children and was now recommending that his visits be reduced and again supervised.

The agency further reported that father himself had admitted he was having difficulty disciplining the children. On May 29, 2013, the social worker, Rebecca Navarro, observed a visit between father and the children for about 45 minutes. During the visit, the children were “very active” and father made several attempts to place Seth in time out. During these attempts, Navarro observed that “Seth would become upset and pretend to cry and then would try to walk away.” Seth finally completed his time out on the third attempt.

Father told Navarro he had a difficult time placing the children in time out, explaining they would become upset and tell him he was mean and they did not like him. Because he wanted his visits with the children to be positive, father told Navarro he would ask the foster parents to put the children in time out for bad behavior during the visits. Navarro replied it was not the foster parents’ responsibility to discipline the children if they did not behave with father. She also noted in her report that the foster parents had complained father put them “in an awkward situation” by asking them on several occasions to put the children in time out for him.

The agency further reported that the children had been diagnosed with Reactive Attachment Disorder (RAD), and the children’s therapist, Martha Schein, opined it would

take at least a year of treatment to see improvement in their “severe RAD symptoms.” Schein also believed the children were “trying to say something” through their negative behaviors before and after visits with father. In addition, the children made statements that “dad hurt them.” However, Schein could not determine whether “dad hurt them recently or in the past.” Schein concluded the children were “not ready to be around the father on a consistent basis” and “therapeutically” she could not “advocate” for their return to father at that time.

An addendum report filed on August 5, 2013, reported that the agency remained concerned the children’s negative behaviors were continuing to escalate following visits with father. The foster parents reported that after a visit on July 17, 2013, the children “grabbed each other’s jugulars and Seth stated, ‘I’m going to kill you.’” When the foster parents asked the children where they learned this type of behavior, they responded that “daddy” taught them. The children also told the foster parents that father let them watch horror movies like “The Bride of Chuckie.” The foster parents reported feeling the children were not “learning anything positive during their visits with their father because they have been making more and more comments about hurting or killing each other.”

Navarro also reported that she and another social worker, Tiffanie McReynolds, had both observed the children engage in negative behaviors immediately following visits with father. Navarro explained she had assisted father by transporting the children back to their foster home on two occasions, and McReynolds had assisted on one occasion. During each of these occasions, the social workers had to pull over because of the children’s behaviors, which included fighting, hitting, kicking, yelling at each other and, sometimes, yelling at the social workers. Seth also tried to spit at Navarro on one of the occasions. According to the foster parents, such behavior was typical of the children after visiting with father. The foster parents complained that “they have worked really hard in regards to the children’s RAD behavior but it does not appear to be doing any good when they return from the father’s home.”

On July 31, 2013, McReynolds went to father's home to pick up the children after father called Navarro to tell her he was having car trouble and was unable to transport the children back to their foster home. McReynolds reported that, when she arrived at father's home, she saw a 40-ounce beer bottle sitting by the front door and other trash and debris strewn along the front porch.

Father was not at home and McReynolds identified herself to the paternal grandmother, who was home with the children. As McReynolds was speaking with the grandmother, one of the children ran outside, but the grandmother did not appear to be too concerned. McReynolds started calling for the child and followed him out to an empty field. The child then ran back to the home and the grandmother told him to go get his shoes. McReynolds observed the child was barefooted and his face, hands, and feet were "very dirty."

The grandmother then tried to help McReynolds put the children in the car and say goodbye to them. McReynolds reported that the children seemed "resistant" when she told them to give their grandmother a hug and a kiss. When they finally did give the grandmother a hug and a kiss, the children wanted to give McReynolds a hug and kiss too, even though they had just met her.

McReynolds further reported that it was a struggle to get the children buckled into their car seats. As she would buckle in one child, the other child would unbuckle himself. Even though the safety restraints fit properly, Seth screamed that his straps were too tight.

In the meantime, McReynolds overheard the children's grandmother talking to father on her cell phone. The grandmother told father that she was having to chastise the children, this was not her job, and he needed to be present the next time the agency came to pick up the children.

As McReynolds drove the children home, they were unruly, throwing snacks at one another and trying to open the car doors. At one point, McReynolds had to pull the

car over because Zachary unbuckled his safety restraints. When she tried to open the back door, Zachary kept locking the door manually to try to prevent her from buckling him back in his car seat.

During the drive, both children asked McReynolds several times if they could come home with her. Seth also told her that father had a girlfriend and “kisses her ass.” After McReynolds reminded the children not to use bad words, the children told her father had left the house with his girlfriend, leaving them in their grandmother’s care.

Navarro further reported that on August 5, 2013, the foster parents sent her an e-mail to report a recent incident where the children had inflicted bruises and marks on one another. The foster parents described being awakened at 4:00 a.m. by the children fighting and screaming. When they ran into the children’s bedroom, they found Zachary sitting on top of Seth, choking him, and Seth trying to break free by kicking Zachary and pulling on his ears. When the foster parents told the children they could not play like that because someone could get hurt, the children responded that “their daddy lets them play like that.” The foster parents reported feeling all the work they had put into the children and redirecting their behavior went “out the window” when they visited father.

At the contested 18-month review hearing on August 12, 2013, the children’s therapist, Schein, testified generally as an expert on RAD. According to Schein’s testimony, the disorder developed when a child under the age of five failed to establish a connection with the child’s primary caregiver due to conditions in the living environment, such as neglect or exposure to certain risk factors. In the majority of cases, RAD resulted from “poor connectivity” between the child and the child’s original parent.

Schein confirmed that children with RAD were difficult to parent. Such children struggled with relating to others and exhibited negative behavioral traits, including aggression, anxiety, and defiance. To successfully parent a child with RAD, a caregiver needed to have the energy and patience to maintain structure and consistency in the

child's life, a balanced mixture of nurturing and firmness, and the ability to communicate clearly—and follow through with—consequences when the child made a negative choice.

One of the main goals in treating a child with RAD was to establish a healthy relationship between the child and the adult assigned to provide the primary care for the child. To achieve this goal, therapists would often hold family sessions where they would help the child and caregiver practice communication skills and establish healthy boundaries. Therapists would also conduct separate sessions with the caregiver to help the caregiver develop effective skills to respond to a child's RAD behaviors and symptoms. Schein explained it was important for a child with RAD to establish a bond with an adult who was able to model healthy behaviors to deal with the types of adversity people routinely face in everyday life.

Schein testified it was not unusual for a child with RAD to be both aggressive and affectionate. Since RAD was related more to the lack of consistency and stability provided by a parent, the presence of affection between a child with RAD and the child's parent did not negate a RAD diagnosis. Schein explained that one of the most difficult things for a child with RAD was the fact that, by nature, all humans want affection and to connect to someone else to feel safe. A child with RAD will often alternate between craving attention and affection and feeling angry and confused when they do not receive it.

Schein further testified that any type of change, such as the beginning of a new school year, was usually difficult for children with RAD. They often felt safe in a structured environment with consistent rules but had difficulty during less structured periods, like lunchtime and recess at school, due to their problems relating to adults and peers. Schedules and routines were therefore important to children with RAD.

According to Schein, RAD was a treatable disorder, but it could take six months to several years of treatment for children to reach their mental health goals. The length of treatment depended on a number of factors, including the level of commitment to



therapy, the children's resilience, and the amount of time children spent in a high-risk environment. Schein had never seen a child with RAD effectively treated in a period of less than six months.

Father testified on his own behalf that, until their removal by the agency, the children had lived with him and he had cared for them since their birth. Father denied ever yelling at the children or using any type of physical discipline with them. According to father, their mother used to yell and spank the children before she left the home, but he insisted he "never raised a hand" to the children but simply disciplined them by putting them in time outs.

Father further testified he was a MMA cage fighter and this had been his occupation since before the children were born. Around the time each child turned two years old, father tried to teach them self-defense and bought them "little boxing gloves and everything." Father denied teaching the children to be aggressive or to initiate fights. Rather, he taught them that if a fight started they should either try to defend themselves or "talk their way out of it."

Father claimed that, prior to their removal from his care, the children never exhibited most of the negative behaviors currently attributed to them. He never observed Seth hit himself, pull out his hair, talk to himself, use profanity, or be aggressive towards other children. Similarly, he never observed Zachary to suffer from insomnia or night terrors, bite his nails, or engage in destructive behavior.

Father acknowledged that Seth had exhibited problems with insomnia "since birth" but explained it was a "hereditary" condition he shared and testified, "I only sleep literally an hour and a half a day." Father also acknowledged that Zachary had "crying fits" when they lived together but claimed that Zachary was not prone to having tantrums and his crying fits were like those of "[a] normal child" and were likely triggered by typical things such as hunger or a dirty diaper.

After considering all the reports, testimony, and arguments of counsel, the juvenile court adopted the agency's recommendations to terminate father's reunification services, and set a section 336.26 hearing. The court explained:

"Something to me that is telling of the situation that we have is an addendum report wherein the social worker went to pick up the children from the visit because father was unable to transport them as recently as the 31st of July. The circumstances, what happened in that visit, are certainly of great concern to the Court.

"What's of even more concern to the Court is the father wasn't even there. We have visits that are very limited and the father doesn't seem to feel it is appropriate to be there during the entire time the children are there. I think that's indicative of what the father says and what he does are two different things.

"Bottom line is that my concern and responsibility is to the children. And I am not at all comfortable that the children will be adequately cared for by the father in this current situation. In fact, to the contrary is true. I believe they would be subject to inappropriate behavior, as well as an extreme amount of violence with these children. It is perpetuated by themselves, apparently their parents. So in light of all those factors, I am going to terminate the reunification for the father."

***C. The Section 366.26 Hearing***

In its report for the section 366.26 hearing, the agency reported that an adoption assessment completed on June 9, 2014, indicated adoption was the most appropriate plan for the children. The prospective adoptive parents, with whom the children had been living since September 2012, were meeting the children's medical, physical, and emotional needs. Father, on the other hand, had not been consistent or appropriate in his supervised visits with the children, which had had an adverse impact on their emotional well-being.

The report concluded with this summary of the agency's reasons for its recommendations:

"The children have been stable and adjusted very well to their current placement and circumstances. The children are receiving the necessary

support and encouragement to thrive in a healthy, stable, and safe environment. The children are receiving all the necessary services and resources they need. The children are involved in local sports and are active. The children are learning to socialize and live with other children in their placement as there are four other foster children in the home. The children are very close with the identified adoptive parents. The children do not have a good relationship and connection with their father due to his past inconsistency and unstable situation during visits as reported by their substitute care providers and the supervising worker. The father's visits are not focused on developing a relationship with the children and they do not ask for their father or have an attachment to him when he leaves. Due to the children's RAD symptoms such as throwing tantrums, whining, wetting their beds, having anxiety, self-injuring, hitting other children, and having trouble listening when they visit with their father, it would be detrimental to continue visits."

After a contested hearing on June 30, 2014, the juvenile court adopted the agency's recommended orders and findings, terminating father's parental rights and freeing the children for adoption. On July 10, 2014, father filed a notice of appeal from the court's order terminating parental rights.

### **DISCUSSION**

Father now contends the juvenile court's order terminating parental rights should be reversed because the court's detriment finding at the 18-month review hearing is unsupported by substantial evidence. We could not disagree more.

Section 366.22, which governs the proceedings at the 18-month review hearing, required the juvenile court to return the children to father's custody unless it found by a preponderance of the evidence that their return would create a substantial risk of detriment to their safety, protection, or physical or emotional well-being. (§ 366.22, subd. (a).) The agency bears the burden of establishing that detriment. (*Ibid.*) The juvenile court is guided in making its determination by the agency's assessment contained in its status reports of parental efforts to utilize the services provided and the resulting progress. (*Ibid.*) However, "the decision whether to return the child to parental

custody depends on the effect that action would have on the physical or emotional well-being of the child.” (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 899 (*Joseph B.*.)

A parent’s successful participation in reunification does not supplant the requirement that the juvenile court carefully weigh the risk of detriment that reunification may have upon the children. (*Joseph B.*, *supra*, 42 Cal.App.4th at p. 901.) “Compliance with the reunification plan is certainly a pertinent consideration at the section 366.22 hearing; however, it is not the sole concern before the dependency court judge.” (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704; see *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1139-1340.) “[S]imply complying with the reunification plan by attending the required therapy sessions and visiting the children is to be considered by the court; but it is not determinative. The court must also consider the parents’ progress and their capacity to meet the objectives of the plan; otherwise the reasons for removing the children out-of-home will not have been ameliorated.” (*Dustin R.*, at p. 1143.)

If there is substantial evidence to support the findings of the juvenile court, we must uphold its findings. (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) To determine whether there is substantial evidence to support the court’s findings, we review the evidence most favorably to the prevailing party and indulge in all legitimate and reasonable inferences to uphold the court’s ruling. (*Ibid*; *In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

The record contains more than substantial evidence to support the conclusion that returning the children to father’s custody at the time of the 18-month review hearing would create a substantial risk of detriment to their safety, protection, or physical or emotional well-being. Such evidence of detriment included: (1) father’s continuing denial of responsibility for the children’s physical abuse; (2) the proliferation in negative behaviors seen in the children after the court granted father unsupervised visits with the children at the 12-month review hearing; (3) father’s self-professed difficulty disciplining

the children and his attempts to shift the responsibility of disciplining the children to the foster parents in order to keep his visits with the children positive; and (4) and Schein's therapeutic opinions regarding the children, including her inability to recommend returning the children to father based on her concerns, not the least of which was her inability to determine whether the children's statements about father hurting them referred to his past or present conduct towards the children.

We are also unpersuaded by father's assertions that the juvenile court articulated improper grounds in "specify[ing] the factual basis for its conclusion that return would be detrimental." (§ 366.26, subd. (a)). For example, father asserts one of the improper grounds upon which the court based its detriment finding was father's inability to transport the children after visits, a ground father complains is "innocuous" and "not remotely related to the standard required to keep the children from being returned to the father's physical custody."

A careful reading of the juvenile court's ruling, however, reveals the court expressed no concern whatsoever regarding father's inability to transport the children to and from visits. Rather, the court expressed valid concern about *the circumstances* or *what happened* when the social workers went to pick up the children and transport them back to their foster home, as described in the addendum report prepared for the 18-month review hearing. Those circumstances, which we have summarized in detail above, constitute compelling evidence the children were being adversely affected by their unsupervised visits with father, as they were observed to display a number of troubling behaviors immediately following those visits, including potentially dangerous behaviors such as trying to open the car doors and removing their safety restraints in the social worker's moving vehicle.

We are likewise unpersuaded by father's attempt to trivialize the juvenile court's expressed concern regarding father's absence when the children were picked up from their visit with him on July 31, 2013, which the court concluded was indicative that what

father statements and actions regarding the children were “two different things.” Notably, father fails to mention unfavorable details the agency reported about that incident, including the children’s statements that, at some unspecified time during the visit, father left with his girlfriend and Seth’s inappropriate use of adult language in talking about the girlfriend. The court was well within its rights to discount father’s credibility and sincerity when, instead of maximizing the little time he had each week to be with the children, instead chose to leave them with his mother while he went somewhere with his girlfriend and asked the social worker to drive the children back to their foster parents.

Finally, we reject father’s claim that the juvenile court erred in finding that returning the children to him would be detrimental because, by the time of the 18-month review hearing, he had overcome the problem (i.e., physical abuse) that led to the children’s removal and had accomplished the goal in this case, which, in father’s words, was “to be able to parent the children effectively without resorting to corporal punishment or physical abuse.” In support of his claim, father relies heavily on the agency’s reports for the 12-month review hearing, which described his positive interactions with the children and ability to discipline them effectively during *supervised* visits.

The evidence that existed at the time of the 12-month review hearing did not negate the juvenile court’s detriment finding at the 18-month review hearing, which was supported by evidence that the children’s behavior had deteriorated since commencing *unsupervised* visits with father, as well as evidence father admittedly had difficulty disciplining the children and tried to shift the responsibility of discipline to the foster parents, so that his visits with the children could stay positive. The juvenile court could reasonably conclude that father’s admitted difficulty disciplining the children in an unsupervised setting, combined with his continuing denial of physical abuse, increased

the likelihood he would again resort to physical abuse of the children—and lie about it afterwards—if the children were returned to his custody.<sup>5</sup>

For all these reasons, we reject father’s contention that the juvenile court’s order terminating parental rights must be reversed based on his claim that there is insufficient evidence to support the court’s finding of detriment at the 18-month review hearing. We find substantial evidence supports the court’s determination it would be detrimental to return the children to father’s custody at that time, and reject all his arguments to the contrary.

### **DISPOSITION**

The order terminating parental rights is affirmed.

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<sup>5</sup> Father’s assertions that the agency failed to offer any evidence linking the children’s proliferation of negative behaviors during the 18-month review period to their unsupervised visits with father, and suggesting the behaviors were caused by the foster parents, in whose care the children had previously been thriving, do not merit extended discussion. There was ample evidence linking the children’s negative behaviors to their unsupervised visits with father, including the children’s own statements that father taught and/or allowed some of the aggressive fighting behaviors they were exhibiting on an increasing basis.

Moreover, father’s heavy reliance on a report prepared by the children’s court-appointed advocate (CASA), which was critical of the foster parents and flattering of father, conveniently ignores evidence that the agency investigated the CASA’s report. In the agency’s investigation, the results of which were detailed in the addendum report for the 18-month review hearing, the agency learned that, although the CASA’s report was filed on July 17, 2013, the foster parents reported they had not seen the CASA since April 2013 (i.e., around the time of the 12-month review hearing). The foster parents further reported they had not heard from the CASA since filing a complaint with her supervisor, complaining that she engaged in inappropriate behavior with the children, including continuing to allow them to kiss her on the lips, against the foster parents’ wishes and attempts to explain to her that, because of the children’s RAD diagnoses, she needed to set boundaries with them. The foster parents also complained that the CASA permitted the children to do things that violated “clearly posted” house rules in the foster home, including climbing and jumping off furniture.